

Appl. No. 10/634,939
Amtd. dated July 24, 2006
Reply to Office Action of March 22, 2006
Attorney Docket 17398

REMARKS/ARGUMENTS

Claims 1-10 are currently pending for examination. Claims 1-5 and 7-8 are presently amended. Applicant notes that no new limitations have been added to and no prior limitations have been deleted from Claim 5. No new matter has been added.

Rejection of Claims 1-10 under 35 U.S.C. 112

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action provides:

“A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired.”

The extra limitation of previously submitted Claim 1 has been removed in presently submitted Claim 1 as well as newly rewritten independent Claim 5. Claims 2-4 and 6-10 depend from Claim 1. Withdrawal of the rejection is respectfully requested.

Rejection of Claims 1-7 under 35 U.S.C. 102(e)

Claims 1-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Asche et al. (US 6,431,299 B1).

In order for a reference to be an anticipatory reference, the reference must disclose each and every element of the claimed invention.

With respect to Claim 1-4, Claim 1 as presently submitted claims, in-part, “a further air intake is provided in said delivery duct downstream of said at least one air intake; said further air intake being shielded from the air coming from said at least one air intake by a deflector.” The examiner states in #8 of his rejection that “neither Asche et al. nor Sugano disclose a second air inlet with deflector.”

As the cited reference of Asche fails to disclose at least “a further air intake is provided in said delivery duct downstream of said at least one air intake; said further air intake being shielded from the air coming from said at least one air intake by a deflector” as claimed in Claim 1 as currently presented, the rejection should be withdrawn. Claims 2-4 depend from Claim 1 and should be allowed over the cited art for at least the same reason as Claim 1. Withdrawal of the rejection is respectfully requested.

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With respect to Claims 5-7, Claim 5 has been rewritten into independent form including all the limitations of the base claim and all intermediary claims from which it previously depended. No additional limitations have been added.

Applicant respectfully submits that the cited reference of Asche fails to disclose each and every element of the claimed invention as claimed in Claim 5. At minimum, Asche fails to disclose "an outer, lateral side of said delivery duct is formed by a side bonnet panel of the vehicle bodywork; and wherein at least part of said side bonnet panel is pivotable to an open position for exposing the radiator" as claimed in original as well as currently amended Claim 5.

The Office Action provides:

"Asche et al. discloses an excavator 10 comprising an air intake 64, a duct including first longitudinal duct 56 and second transverse duct 30, radiator 42, a fan 46, and pivoting bonnet panel 41, wherein said duct extends along the longitudinal direction of the excavator, the intake is at the front, and the radiator is in the rear, as shown in figures 1-5."

Asche appears to teach a tailgate 41 at the rear of the excavator that is hinged to the wall 40 which can be opened for receiving the engine and components in chamber 35 (engine compartment 30 forms an enclosed chamber 35) (column 2, lines 32-36 and Figs. 3 & 4).

The tailgate 41 taught by Asche, at best provides limited access to the radiator 47. Conversely, the present invention as claimed in Claim 5, provides a pivotable side bonnet panel which enables easy access to the radiator and associated elements (specification, page 5, lines 29-31). Such complete access for inspection/maintenance of the radiator and associated elements is clearly shown in Figs 2 & 3 and provides an obvious design advantage over the prior art. Clearly, Asche does not disclose a pivotable side panel 19 which also forms a side of the delivery duct as is shown in Figs 1-4 of the present invention.

As the cited art of Asche fails to disclose all of the elements claimed in Claim 5, Claim 5 should be allowed over the cited art. Claims 6-7 depend from Claim 5 and should be allowed over the cited reference of Asche for at least the same reason as Claim 5.

Withdrawal of the rejection is respectfully requested.

Rejection of Claims 8-9 under 35 U.S.C. 103(a)

Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asche et al., as applied to Claim 7 above, and further in view of Sugano (US 6,540,036 B1).

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In order to establish a *prima facie* case of obviousness, three criteria must be met.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the applied reference must teach or suggest all the claim limitations (See MPEP §2143).

Claims 8-9 depend indirectly from Claim 5, which as previously discussed is believed allowable over the cited reference of Asche as Asche fails to teach or disclose all of the elements cited in Claim 5. Likewise, the additionally cited reference of Sugano also fails to teach or disclose all of the elements cited in Claim 5. At minimum, like Asche, Sugano fails to teach or disclose "an outer, lateral side of said delivery duct is formed by a side bonnet panel of the vehicle bodywork; and wherein at least part of said side bonnet panel is pivotable to an open position for exposing the radiator" as claimed in Claim 5.

As Claim 5 is believed to be allowable over the cited references of Asche and Sugano, Claims 8-9 which depend from Claim 5 are also believed to be allowable over the cited references for at least the same reason as Claim 5. Withdrawal of the rejection is respectfully requested.

Rejection of Claim 10 under 35 U.S.C. 103(a)

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Asche et al., as modified by Sugano, as applied to Claim 9 above, and further in view of Akira et al. (US 5,816,351 A).

It is respectfully submitted that the Office Action does not meet the criteria for establishing a *prima facie* case of obviousness. As previously stated, Claim 9, from which Claim 10 directly depends, is believed to be allowable over the cited references of Asche and Sugano. Applicant respectfully submits that the additionally cited reference of Akira also fails to teach or disclose the limitations of the claims from which Claim 10 depends.

Additionally, Applicant respectfully submits that Akira also fails to teach or suggest all of the limitations of Claim 10 as presented as Akira also fails to teach or suggest "a further air intake is provided in said delivery duct downstream of said at least one air intake; said further air intake being shielded from the air coming from said at least one air intake by a deflector" as claimed in Claim 10.

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Akira appears to teach multiple inlets, as seen in Fig. 1 at 14a and 14b, situated a similar distance from the surface of a radiator directly in front the radiator and across a small open area. Neither opening 14a or 14b is clearly nor apparently downstream of the other as air entering both openings 14a and 14b travels approximately the same distance to the radiator through the same open space.

The examiner contends Akira shows a deflector element 6b. Applicant respectfully disagrees. Element 6b is identified by Akira merely as a side panel (column 4, line 66). Additionally, as Fig 1 clearly shows, air entering openings 14a or 14b would not encounter panel 6b as the panel does not lie in the pathway of air from the openings to the radiator.

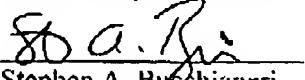
Conversely, as clearly shown in Fig 4, the deflector G of the present invention clearly is situated downstream of inlet 15a and is situated such that it clearly would separate air flow in air duct 18 from air entering inlet 15b shown by arrow A2. Additionally, it is noted that page 6, lines 3-5 of the present application states that with respect to openings in the panel directly in front of the radiator as taught by Akira "it is preferred not to in order to further reduce noise transmission toward the environment. Moreover, air entering through openings in the panel 19 would disturb the laminar flow of air through the duct 18."

As the cited references of Asche et al., Sugano, and Akira et al. individually, or in combination fail to teach or suggest all of the limitations of Claim 9 from which Claim 10 depends nor all of the limitations of Claim 10 itself, Claim 10m should be allowed over the cited art. Withdrawal of the rejection is respectfully requested.

A fee of \$120 is believed due for a one month extension of time under 37 CFR 1.17(a)(1). The Commissioner is authorized to charge the fee to Deposit Account No. 14-0780 along with any other fee determined to be due.

In view of the above remarks, it is believed that the application is in condition for allowance. Accordingly, an early Notice of Allowance is respectfully requested.

Respectfully submitted,


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